

DAK/8  
JW

PTO/SB/64 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

**F-5231**

First named inventor: **Richard Brown**

Application No.: **09/050,614**

Art Unit: **1723**

Filed: **30 March 1998**

Examiner: **M. Savage**

Title: **Carrier for Holding a Flexible Fluid Processing Container**

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☐ Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ **1500** (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in \_\_\_\_\_ of **Formal Drawings**  
the form of **Fee Transmittal and Submission** / \_\_\_\_\_ (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_  
☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ **1400**

- ☐ has been paid previously on \_\_\_\_\_  
☒ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

03/01/2005 YPOLITE1 00000012 09050614

1500.00 OP

01 FC:1453

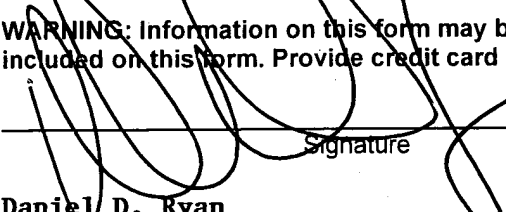
## 3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

  
Signature

Feb 25, 2005  
Date

Daniel D. Ryan

Typed or printed name

Ryan Kromholz & Manion, S.C.

PO Box 26618

Address

Milwaukee, Wisconsin 53226

29,243

Registration Number, if applicable

262 - 783 - 1300

Telephone Number

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Attachments 1 to 5 to Petition

# CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

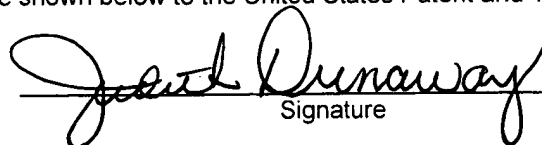
I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

25 February 2005

Date

  
Signature

Judith Dunaway

Typed or printed name of person signing certificate



Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Brown et al Attorney Docket No.: 1006.F-5231  
Serial No.: 09/050,614 Examiner: M. Savage  
Filed: March 30, 1998 Group Art Unit: 1723  
Title: A Carrier for Holding a Flexible Fluid Processing Container

ATTACHMENTS TO PETITION FOR  
REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY  
UNDER 37 CFR 1.137(B)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Va 22313-1450

Dear Sir:

The following attachments accompany applicant's Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b). The attachments provide a chronology of applicant's diligent efforts to revive this application, which was abandoned unintentionally, and without any intentional delay. The attachments are:

(1) Applicant's Petition to Accept Delayed Payment of Issue Fee/Failure to Pay Unintentional (37 CFR 1.155(c) and 1.316(c), mailed June 14, 2004, within one year of the issue fee due date.

(2) Decision on Petition, mailed July 30, 2004, which (for reasons not explained) treated the Petition (Attachment 1) not under 37 CFR 1.137(b) but under 37 CFR 1.137(a). The Decision dismissed Petition (Attachment 1) and instructed applicant to file a Petition under 37 CFR 1.181 and alternatively a Request for Reconsideration under 37 CFR 137(a).

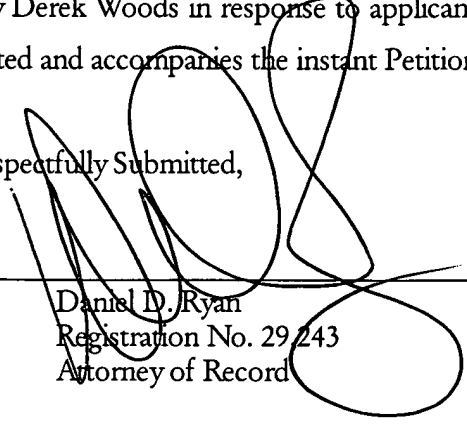
(3) Applicant's Petition Under 37 CFR 1.181 and Alternatively a Request for Reconsideration under 37 CFR 137(a), filed as instructed by the Decision (Attachment 2).

(4) Decision of Petition mailed February 18, 2005, dismissing the Petition (Attachment 3) and "strongly" urging applicant to file a petition under 37 CFR 1.137(b), which the instant Petition accomplishes.

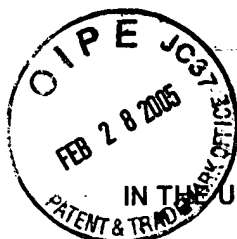
(5) The Notice of Allowance and Issue Fee Due and Notice of Allowability received by fax on October 5, 2004 from Petitions Attorney Derek Woods in response to applicant's request. It is this Issue Fee Due statement that has been executed and accompanies the instant Petition.

Respectfully Submitted,

By

  
Daniel D. Ryan  
Registration No. 29,243  
Attorney of Record

RYAN KROMHOLZ & MANION, S.C.  
Post Office Box 26618  
Milwaukee, Wisconsin 53226  
(262) 783 - 1300  
25 February, 2005



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Brown et al.  
Serial No.: 09/050,614  
Filed: 30 March 1998  
For: Surgical Weight Control Device

Group No.: 1723  
Examiner: M. Savage

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO ACCEPT DELAYED PAYMENT OF ISSUE FEE  
FAILURE TO PAY UNINTENTIONAL (37 CFR 1.155(c) AND 1.316(c))

NOTE A terminal disclaimer should not accompany a petition to accept late payment of the issue fee under 37 CFR 1.155 or 1.316. Notice of July 9, 1985 (1056 O.G. 61).

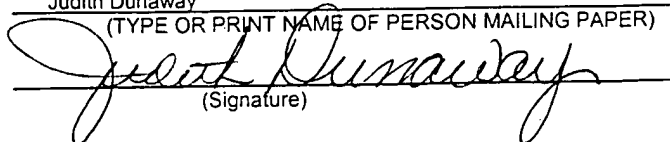
1. Applicant petitions for acceptance of the issue fee for which payment was due on 13 June 2003
2. This petition is filed:  
☒ (a) within one year of the issue fee due date (which fell on a Sunday).  
☐ (b) within three months of the date of the first decision in a petition to accept late payment of the issue fee because of unavoidable delay under 37 CFR 1.316(b).
3. The entire delay in filing the required reply, namely, payment of the issue fee, from the due date for the reply until the filing of a grantable petition was unintentional. (37 CFR 1.137(b))
4. Please see attached Remarks Accompanying Petition for Revival of An Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)
5. **Payment of the issue fee:**  
☐ has been filed.  
☒ is enclosed.  
Regular patent, 37 CFR 1.18(a),  
☒ \$1,330.00 LARGE ENTITY  
☐ \$ 665.00 SMALL ENTITY  
Design patent, 37 CFR 1.18(b),  
☐ \$480.00 LARGE ENTITY  
☐ \$240.00 SMALL ENTITY
6. **Petition fee (37 CFR 1.17(m))**  
Application status is:  
☐ Small business entity-fee \$ 665.00  
☒ other than small entity-fee \$1,330.00

CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed as follows: Mail Stop Petition, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Judith Dunaway

(TYPE OR PRINT NAME OF PERSON MAILING PAPER)

  
(Signature)

Date 14 June 2004

7.

**Payment of total fee:**

Total issue and petition fee to be paid \$ 2660.00

☒ Enclosed please find check for \$ 2660.00

☐ Charge Account No. \_\_\_\_\_ the amount of \$ \_\_\_\_\_

☒ Charge Account No. 06-2360 - for any additional fee required. A duplicate of this petition is attached.

Date: 14 June 2004

Reg. No.: 29,243

Tel. No.: (262 ) 783 - 1300



SIGNATURE OF ATTORNEY

Daniel D. Ryan

(TYPE OR PRINT NAME OF ATTORNEY)

**RYAN KROMHOLZ & MANION, S.C.**

PO Box 26618

Milwaukee, Wisconsin 53226

(P.O. Address)

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Brown et al

Attorney Docket No.: 1006.F-5231

Serial No.: 09/050,614

Examiner: M. Savage

Filed: March 30, 1998

Group Art Unit: 1723

Title: Surgical Weight Control Device

REMARKS ACCOMPANYING PETITION FOR REVIVAL OF AN APPLICATION FOR  
PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. §1.137(b)

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

On July 17, 2003, the Patent and Trademark Office issued a Notice of Abandonment in the above matter, stating that applicant failed to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance. Applicant never received the Notice of Allowance.

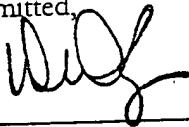
Applicant intended to immediately petition to revive the application. However, after many phone calls and status inquiries to the Examiner, it was determined that the prosecution file had been lost by the Patent Office. Applicant hired a Washington associate to obtain a PALM printout of the file activity from the Patent Office. According to the PALM printout, the Notice of Allowance was mailed on 13 March 2003.

The official status of the PTO file is "LOST". On January 23, 2004, Applicant requested that the file be reconstructed in accordance with 37 CFR 1.251. Applicant has not yet received a response to this Request.

For these reasons, Applicant has been unable to obtain a copy of the Notice to Pay Base Issue Fee, so that it can reply to the Notice by payment of the Base Issue Fee. It is for this reason that the entire delay in filing the required reply from the due date until the filing of this petition pursuant to 37 C.F.R. § 1.137 (b) was unintentional. In compliance with 37 C.F.R. § 1.137 (c), Applicant hereby submits payment of the Base Issue Fee and, further, requests that the Notice be reissued by the Patent Office and forwarded to the Applicant to the correspondence address set forth in the Declaration previously filed in this case (Bradford R. L. Price, Baxter Healthcare Corporation, Fenwal Division (RLP-30), P.O. Box 490, Route 120 and Wilson Road, Round Lake, Illinois 60073).

Respectfully Submitted,

By

  
Daniel D. Ryan  
Registration No. 29,243

RYAN KROMHOLZ & MANION, S.C.  
Post Office Box 26618  
Milwaukee, Wisconsin 53226  
(262) 783 - 1300  
14 June, 2004

Enclosures: Copy of Statement Under 37 C.F.R. §1.137(b)  
Check





UNITED STATES P. NTA TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

RECEIVED

AUG 04 2004

Paper No. 30

FENWAL/PATENT LAW

Bradford R.L. Price  
Baxter Healthcare Corporation  
Fenwal Division (RLP-30)  
P.O. Box 490, Route 120 and Wilson Road  
Round Lake, IL 60073

COPY MAILED

JUL 30 2004

OFFICE OF PETITIONS

In re Application of :  
Brown et al. :  
Application No. 09/050,614 :  
Filed: March 30, 1998 :  
Attorney Docket Number: F-5231 : ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 17, 2004, to revive the above-identified application. The petition is properly treated under 37 CFR 1.137(a).

This Petition is hereby dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is not final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due, and Notice of Allowability (hereinafter "Notices"), mailed March 13, 2003. The Notices set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on June 14, 2003. A Notice of Abandonment was mailed July 17, 2003.

Applicant files the instant petition wherein Applicant avers that he did not receive the Notice.

Applicant is advised that an allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

DOCKETED

DUE: 9/30/2004

CLERK:

DOCKETED  
R/S

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.

2. A copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in Applicant's statement.

Accordingly, Applicant's assertion, that the Notice was not received, is insufficient to justify withdrawing the holding of abandonment. Applicant must also attest to the fact that a search of the file jacket and docket records indicate that the Notice was not received, and provide a copy of the docket record (or file jacket) where the non-received Notice would have been entered had it been received and docketed.

Petitions to withdraw the holding of abandonment are properly treated under 37 CFR 1.181 (no fee), and are appropriately addressed in the Technology Center that abandoned the application.

Applicant should file a petition under 37 CFR 1.181, and alternatively a Request for Reconsideration under 37 CFR 1.137(a).

Applicant is also advised the the Notice of Allowability required corrected drawings which included the changes required by the proposed drawing correction filed February 10, 2000, which has been approved by the Examiner.

A copy of the Notice of Allowance and Issue Fee Due and Notice of Allowability are enclosed herewith. ←

A refund of the difference between the fee for a petition under 37 CFR 1.137(b), \$1330, and the fee for a petition under 37 CFR 1.137(a), \$110.00, or \$1220.00, has been credited to deposit account 06-2360.

It is also noted that Attorney Ryan has changed his correspondence address; however, there is no indication that a correspondence address change was filed in this application. Any assertion that the Office action was not received must also include a Declaration from Practitioner that, at the time the Office action would have been received at the correspondence

Application No. 05/000,614

Page 3

address of record, the correspondence address was in fact a valid correspondence address. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

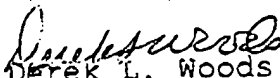
Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

By FAX: (703) 872-9306  
Attn: Office of Petitions

By hand: 220 20<sup>th</sup> Street S.  
Customer Window  
Crystal Plaza Two, Lobby Room 1B03  
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

  
Derek L. Woods  
Petitions Attorney  
Office of Petitions

Cc: RYAN KROMHOLZ & MANION, SC  
Post Office Box 26618  
MILWAUKEE, WI 53226

Enclosures: Notice of Allowance and Notice of Allowability

1  
not attached  
8.5.04  
S/g

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Brown et al	Attorney Docket No.:	1006.F-5231
Serial No.:	09/050,614	Examiner:	M. Savage
Filed:	March 30, 1998	Group Art Unit:	1723
Title:	A Carrier for Holding a Flexible Fluid Processing Container		

PETITION UNDER 37 C.F.R. §1.181  
AND ALTERNATIVELY  
REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. §1.137(a)  
(Renewed Petition under 37 C.F.R. §1.137)

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Va 22313-1450

Dear Sir:

This Petition Under 37 C.F.R. § 1.181 and alternatively Request for Reconsideration Under 37 C.F.R. 1.137(a) (Renewed Petition under 37 C.F.R. §1.137) is being submitted pursuant to instructions contained in the Decision on Petition Under 37 C.F.R. 1.137(b) mailed July 30, 2004 (Attachment 1). An automatic three month extension of time to respond, up to and including December 30, 2004, is respectfully requested. The requisite fee accompanies this Petition.

Applicant hereby petitions that the holding of abandonment in this application be withdrawn under 37 C.F.R. § 1.181, or alternatively, that the Petition for Revival under 37 C.F.R. 1.137(a) be reconsidered/renewed and granted, and that the application be processed for issuance.

**Statement of Facts:**

1. On June 14, 2004, Applicant submitted a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b) (Attachment 2), which is incorporated herein by reference. As set forth in the Petition to Revive, the basis underlying the unintentional nature of the matter was that a Notice of Allowance, apparently issued in the case on March 13, 2003, was never received by the applicant at the designated correspondence address. The matter was exacerbated (as also set forth in the Petition for Revival) by the fact that the Patent Office file for this application was apparently "lost," so it was impossible for Applicant to obtain a copy of the Notice of Allowance to

reply in all respects to the Notice of Allowance as required under 37 C.F.R. § 1.137(b). Applicant did the best it could do under the circumstances – Applicant submitted payment of the Base Issue Fee at the time it submitted its Petition to Revive.

2. The Decision on Petition Under 37 C.F.R. 1.137(b) (Attachment 1) treated Applicant's Petition to Revive as falling under 37 C.F.R. § 137(a) and not 37 C.F.R. § 1.137(b). Also, the Decision on Petition Under 37 C.F.R. 1.137(b) (Attachment 1) indicated that the Notice of Allowance required corrected drawings -- the Applicant was not aware of this at the time it filed its Petition because it had never received the Notice of Allowance and could not ascertain its contents because the Patent Office file for this application had been "lost." Further, although the Decision on Petition Under 37 C.F.R. 1.137(b) (Attachment 1) indicated that a copy of the Notice of Allowance was attached to the Decision, unfortunately it was not. In response to Applicant's subsequent request, Applicant on October 5, 2004 for the first time received (by fax) a copy of the Notice of Allowance and Issue Fee Due and Notice of Allowability from Petitions Attorney Derek Woods (which will be collectively called the "Notice of Allowance" and which is Attachment 3).

**Petition/Request for Reconsideration (Renewed Petition under 37 C.F.R. §1.137):**

Pursuant to instructions set forth in the Decision, the undersigned attorney of record for the Applicant hereby states on behalf of the Applicant:

- (1) The Notice of Allowance was not received by the Applicant.
- (2) Applicant attests to the fact that a search of the file jacket and docket records indicate that the Notice of Allowance was not received (see Attachment 4).
- (3) A copy of the file jacket where the non-received Notice of Allowance would have been entered had it been received and docketed, as referred to in (2), is attached as Attachment 4.
- (4) The correspondence address of record is a valid correspondence address. The Decision alleged that the correspondence address had been changed, which is not the case. The correspondence address of record for this application has always been Bradford R. L. Price, Baxter Healthcare Corporation, Fenwal Division (RLP-30), P.O. Box 490, Route 120 and Wilson Road, Round Lake, Illinois 60073) (which is the address on the Notice of Allowance).

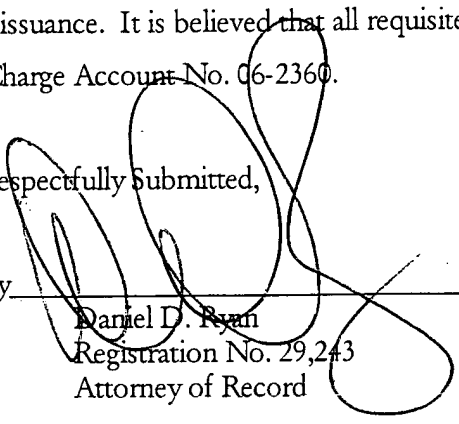
As set forth in the Notice of Allowance, Applicant herewith submits the corrected formal drawings.

Conclusion:

Applicant therefore believes that the withdrawal of the holding of abandonment is warranted and requests that the application be processed for issuance. It is believed that all requisite fees have been paid. If not, please charge any additional fees to Charge Account No. 06-2360.

Respectfully Submitted,

By

  
Daniel D. Ryan  
Registration No. 29,243  
Attorney of Record

RYAN KROMHOLZ & MANION, S.C.

Post Office Box 26618

Milwaukee, Wisconsin 53226

(262) 783 - 1300

29 December, 2004

## CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated below in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Express Mail No.: EV 480412383 US

EV480412383US

By: Julie A. Wolf

Julie A. Wolf

Date: 29 December 2004



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Bradford R.L. Price  
Baxter Healthcare Corporation  
Fenwal Division (RLP-30)  
P.O. Box 490, Route 120 and Wilson Road  
Round Lake, IL 60073

COPY MAILED

FEB 18 2005

OFFICE OF PETITIONS

In re Application of :  
Brown et al. :  
Application No. 09/050,614 :  
Filed: March 30, 1998 :  
Attorney Docket Number: F-5231 : ON PETITION

This is a decision on the petition under 37 CFR 1.181 and  
Alternatively Request for Reconsideration Under 37 CFR 1.137(a),  
filed December 29, 2004.

The Petition under 37 CFR 1.181 is dismissed.

The Petition under 37 CFR 1.137(a) is dismissed.

DOCKETED

The above-identified application became abandoned for failure to  
timely and properly reply to the Notice of Allowance and Issue Fee  
Due, and Notice of Allowability (hereinafter "Notices"), mailed  
March 13, 2003. The Notices set a non-extendable three (3) month  
period for reply. No response having been received, the  
application became abandoned on June 14, 2003. A Notice of  
Abandonment was mailed July 17, 2003.

Applicant filed a petition to revive the application under 37  
CFR 1.137(b) on June 17, 2004, wherein Applicant averred that he  
did not receive the Notices. The petition was treated under 37  
CFR 1.137(a) and dismissed. Applicant was advised that an  
allegation that an Office action was not received may be  
considered as a petition for the withdrawal of the holding of  
abandonment. Applicant was advised to file a petition under 37  
CFR 1.181 and alternatively, a Request for Reconsideration under  
37 CFR 1.137(a).

Applicant was also advised that the Notice of Allowability  
required corrected drawings.

RECEIVED

The instant petitions

FEB 23 2005

Corporate Patent Administration

2.24.05  
518



Application No. 09/050,614

Page 2

Applicant files the instant petition under 37 CFR 1.181 and alternatively requests reconsideration under 37 CFR 1.137(a).

The petition under 37 CFR 1.181

The petition under 37 CFR 1.181 avers that the Notices were not received. In support of this assertion, Applicant provides a copy of a file jacket/docket record for this application. A review of the file jacket/docket record reveal that the assignee is Baxter International (of Round Lake, IL). Also noted on the file jacket/docket record is a Milwaukee, Wisconsin address which appears at the bottom of the file/jacket/docket record. It is unclear from the petition and the file jacket/docket record whether the file jacket and/or docket records referenced in the petition as having been searched were that of the address appearing in the petition:

RYAN KROMHOLZ & MANION, SC  
Post Office Box 26618  
MILWAUKEE, WI 53226,

or the correspondence address of record:

Bradford R.L. Price  
Baxter Healthcare Corporation  
Fenwal Division (RLP-30)  
P.O. Box 490, Route 120 and Wilson Road  
Round Lake, IL 60073.

Further to this, Applicant notes that the decision dismissing petition, mailed July 30, 2004, was incorrect in stating that the correspondence address has been changed. Applicant asserts that the correspondence address of record is and has always been

Bradford R.L. Price  
Baxter Healthcare Corporation  
Fenwal Division (RLP-30)  
P.O. Box 490, Route 120 and Wilson Road  
Round Lake, IL 60073,

which, Applicant also notes, is the address appearing on the Notice.

A review of the instant petition and of the three petitions filed in this application on February 7, 2003; June 17, 2004, and December 29, 2004, respectively, reveal that all of the petitions were signed by Petitioner using the address of

Application No. 09/050,614

Page 3

RYAN KROMHOLZ & MANION, SC  
Post Office Box 26618  
MILWAUKEE, WI 53226

The Milwaukee address that Applicant has used when filing his petition differs from the correspondence address of record, which is that of the assignee Baxter International (of Round Lake, IL).

Applicant is advised that the Notice was properly mailed to the correspondence address of record. Applicant has verified that the address on the Notice is the correspondence of record, and Office records indicate the Illinois address as the correspondence address of record.

Petitioner is obviously in Milwaukee, and the correspondence address of record is that of the assignee in Illinois. These circumstances point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

In absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. However, here, the showing outlined above is not sufficient because there are circumstances that point to a conclusion that the Office communication may have been lost after receipt in Illinois rather than a conclusion that the Office communication was lost in the mail.

Petitioner's docket record is apparently evidence of receipt, or lack thereof, from the assignee, and bears no weight on whether the correspondence, properly mailed to the address of record, was received at the correspondence address of record.

Accordingly, the petition under 37 CFR 1.181 is dismissed.

Petition under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance,

or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Applicant lacks item (3) as set forth above.

#### Applicable Law

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.<sup>1</sup> 35 U.S.C. 41(c)(1) states, "The Commissioner may accept the payment of any maintenance fee ... at any time ... if the delay is shown to the satisfaction of the Commissioner to have been unavoidable." (emphasis added). "In the specialized field of patent law, ... the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. His interpretation of those provisions is entitled to considerable deference." Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir. 1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1425, 7 U.S.P.Q.2d (BNA) 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.").

"The critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff,

<sup>1</sup> The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F.3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1787 (Fed. Cir. 1995) (citing In re patent No. 4,409,763, 7 U.S.P.Q.2d (BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982)). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." In re Mattullath, 38 App. D.C. 497, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)). However, "The question of whether an applicant's delay in prosecuting an application was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account." Nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO rules, the MPEP, or Official Gazette notices, does not constitute unavoidable delay.<sup>2</sup> The statute requires a "showing" by petitioner. Therefore, petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Applicant is further advised that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N.

<sup>2</sup> Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

<sup>3</sup> See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D. D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D. D.C. 1985) (Plaintiffs, through their counsel's actions, or their own, must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

Application No. 09/050,614

Page 6

Ind. 1987)). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Finally, a "delay (in responding) resulting from the lack of knowledge or improper application of the patent statute, rules of practice, or MPEP, [] does not constitute unavoidable delay." MPEP 711.03(c).

#### Applicant's Assertion

Applicant asserts that the Notice was not received.

#### Analysis and Conclusion

As to item (3), Applicant has not provided an adequate showing of unavoidable delay because there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

#### Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$750.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that

Application No. 09/050,614

Page 7

the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

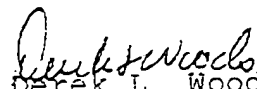
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

By FAX: (703) 872-9306  
Attn: Office of Petitions

By hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

  
Derek L. Woods  
Attorney/Advisor  
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE  
OFFICE OF PCT LEGAL ADMINISTRATION  
P.O. BOX 1460  
ALEXANDRIA, VA. 22313-1460



## FACIMILE TRANSMISSION COVER SHEET

DATE:

10/5/04

TO:

Ms Judy Dunaway

TELEPHONE:

262-783-1300

FAX NO.:

262-783-1241

FROM:

Donk Woods

TELEPHONE:

571-272-3232FAX NO: (571) 273-0459

MESSAGE:

8 pages

NUMBER OF PAGES INCLUDING THIS PAGE: \_\_\_\_\_



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

03/13/2003

Bradford R.L. Price  
Baxter Healthcare Corporation  
Fenwal Division (RLP-30)  
P.O. Box 490, Route 120 and Wilson Road  
Round Lake, IL 60073

EXAMINER

SAVAGE, MATTHEW O

ART UNIT

CLASS-SUBCLASS

1723

494-045600 27

DATE MAILED: 03/13/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/050,614	03/30/1998	RICHARD BROWN	F-5231	7027

TITLE OF INVENTION: CARRIER FOR HOLDING A FLEXIBLE FLUID PROCESSING CONTAINER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1300	\$0	\$1300	06/13/2003

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

## HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.  
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.



## PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Box ISSUE FEE  
 Commissioner for Patents  
 Washington, D.C. 20231  
**Fax** (703)746-4000

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use blocks 1-4)

7590

03/13/2003

Bradford R.L. Price  
 Baxter Healthcare Corporation  
 Fenwal Division (RLP-30)  
 P.O. Box 490, Route 120 and Wilson Road  
 Round Lake, IL 60073

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/050,614	03/30/1998	RICHARD BROWN	F-5231	7027

TITLE OF INVENTION: CARRIER FOR HOLDING A FLEXIBLE FLUID PROCESSING CONTAINER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1300	\$0	\$1300	06/13/2003

EXAMINER	ART UNIT	CLASS-SUBCLASS
Savage, Matthew O	1723	494.045000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent)

☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

☐ Issue Fee

☐ Publication Fee

☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s):

☐ A check in the amount of the fee(s) is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE(S)



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20241  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09,050,614	03/30/1998	RICHARD BROWN	F-5231	7027
7590	03/13/2003		EXAMINER	
Bradford R.L. Price Baxter Healthcare Corporation Fenwal Division (RLP-30) P.O. Box 490, Route 120 and Wilson Road Round Lake, IL 60073 UNITED STATES			SAVAGE, MATTHEW O	
			ART UNIT	PAPER NUMBER
			1723	
			DATE MAILED: 03/13/2003	

**Determination of Patent Term Extension under 35 U.S.C. 154 (b)**  
(application filed after June 7, 1995 but prior to May 29, 2000)

The patent term extension is 0 days. Any patent to issue from the above identified application will include an indication of the 0 day extension on the front page.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)

Any questions regarding the patent term extension or adjustment determination should be directed to the Office of Patent Legal Administration at (703)305-1383.



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/050,614	03/30/1998	RICHARD BROWN	F-5231	7027
7390 03/13/2003				
EXAMINER				
SAVAGE, MATTHEW O				
ART UNIT		PAPER NUMBER		
1723				
DATE MAILED: 03/13/2003				

Bradford R.L. Price  
Baxter Healthcare Corporation  
Fenwal Division (RLP-30)  
P.O. Box 490, Route 120 and Wilson Road  
Round Lake, IL 60073  
UNITED STATES

## Notice of Fee Increase on January 1, 2003

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after January 1, 2003, then the amount due will be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there will be an increase in fees effective on January 1, 2003. See Revision of Patent and Trademark Fees for Fiscal Year 2003; Final Rule. 67 Fed. Reg. 70847, 70849 (November 27, 2002).

The current fee schedule is accessible from: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of the fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after January 1, 2003 (or mailed with a certificate of mailing on or after January 1, 2003), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	09/050,614	BROWN ET AL.	
	Examiner	Art Unit	
	Matthew O Savage	1723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 2-10-03.
2. ☒ The allowed claim(s) is/are 19 and 20 renumbered 1-2, respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☒ including changes required by the proposed drawing correction filed 10 February 2000, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

Application/Control Number: 09/050,614  
Art Unit: 1723

Page 2

This application is in condition for allowance except for the presence of claims 1, 2, 4-18, 22, and 23 drawn to inventions non-elected without traverse. Accordingly, claims 1, 2, 4-18, 22, and 23 have been cancelled.

The following is an examiner's statement of reasons for allowance: U.S. Patent 5,573,678 to Brown et al taken in combination with U.S. Patent 4,445,883 to Schroendorfer are considered the closest prior art, however, neither reference teaches or suggests a carrier secured to the processing container when outside the arcuate centrifuge channel and being shaped to maintain the processing container when outside the arcuate centrifuge channel in a rounded, flexed condition conforming to the arcuate centrifuge channel as recited in instant claim 19.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew O Savage whose telephone number is 703-308-3854. The examiner can normally be reached on Monday-Friday, 6:00am-2:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda W. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

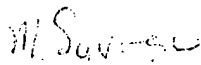
Application/Control Number: 09/050,614

Page 3

Art Unit: 1723

872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Matthew O Savage  
Primary Examiner  
Art Unit 1723

mos  
March 7, 2003